

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

MAR 11 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY: [Signature]

SECURITIES AND EXCHANGE  
COMMISSION,  
PLAINTIFF,

V.

PAUL W. HAARMAN, PATRICK E.  
DUKE, APEG ENERGY GP, LLC,  
DEFENDANTS.

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CAUSE NO. 1:21-CV-235-LY

**ORDER ON REPORT AND RECOMMENDATION**

Before the court in the above-referenced cause is the Complaint filed by the Securities and Exchange Commission (the “SEC”) (Doc. 1) on March 11, 2021; Motion to Dismiss the Complaint filed by Defendants Paul W. Haarman, Patrick E. Duke, and APEG Energy GP, LLC (collectively, the “Defendants”) (Doc. 15); and all responses and replies, which were referred to a United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72; Loc. R. W.D. Tex. App’x C, R. 1(d). The magistrate judge rendered a Report and Recommendation on January 25, 2022 (Doc. 28).

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass’n*, 79 F.3d 1415, 1423 (5th Cir. 1996) (en banc).

Defendants filed objections to the Report and Recommendation on February 7, 2022 (Doc. 30), which the SEC responded to on March 1, 2022 (Doc. 36). In light of the objections, the court will undertake a *de novo* review of the record and applicable law in this case.

Defendants object to the magistrate judge's conclusion that the SEC asserted a claim under the Investment Advisers Act (15 U.S.C. § 80b-6(1)–(2)); asserted a claim under the securities laws (15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b)); 17 C.F.R. § 240.10b-5); and alleged fraud with adequate particularity (FED. R. CIV. P. 9(b)). Defendants' objections primarily reassert arguments raised before the magistrate judge. The court will overrule Defendants' objections.

**IT IS THEREFORE ORDERED** that Defendants' objections to the Report and Recommendation (Doc. 30) are **OVERRULED**.

**IT IS FURTHER ORDERED** that the United States Magistrate Judge's Report and Recommendation (Doc. 28) is **APPROVED** and **ACCEPTED**.

**IT IS FINALLY ORDERED** that Defendants' motion to dismiss (Doc. 15) is **DENIED IN PART** and **GRANTED IN PART** without prejudice, and the SEC is granted leave to amend its complaint. The SEC is **ORDERED** to file an amended complaint in accordance with the terms of this order **on or before April 1, 2022**.

SIGNED this 11<sup>th</sup> day of March, 2022.

  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE